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U.S. - Supreme Court

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CHARLES ELLIOTT CO.

No. 509

IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA
(October Term 1947)

HARRY R. RANDALL, *Petitioner*

vs.

UNITED STATES OF AMERICA, *Respondent*

MOTION FOR REHEARING ON APPLICATION
FOR WRIT OF CERTIORARI TO THE
CIRCUIT COURT OF APPEALS
FOR THE 7TH CIRCUIT

MARVIN B. SIMPSON, SR.
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Attorneys for Petitioner



No. 509

IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA
(October Term 1947)

HARRY R. RANDALL, *Petitioner*

vs.

UNITED STATES OF AMERICA, *Respondent*

MOTION FOR REHEARING ON PETITIONER'S
APPLICATION FOR A WRIT OF CERTIORARI
TO THE CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

TO THE HONORABLE CHIEF JUSTICE, and THE
HONORABLE ASSOCIATE JUSTICES OF THE
SUPREME COURT OF THE UNITED STATES:

Petitioner Harry R. Randall files this his motion
for Rehearing in the above styled and numbered cause,
and as reasons therefor Petitioner says:

I.

This Honorable Court committed error in this case
in failing and refusing to grant petitioner a writ of
certiorari to the Circuit Court of Appeals for the
Seventh Circuit, because the evidence had on the trial
of this cause before the District Court, was insuffi-
cient to support the verdict of the jury, and the Cir-

cuit Court of Appeals committed error in affirming the trial court.

II.

This Honorable Court committed error in this cause in failing and refusing to grant petitioner's application for a writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit, to correct the error of the trial court in refusing petitioner's motion for an instructed verdict because the evidence failed to show that the petitioner Randall had any knowledge or participated in any conspiracy with Perry, or any other person or persons, or had any agreement with said Perry or any other person, express or implied, to violate any law as charged in the indictment.

III.

This Honorable Court committed error in this cause by denying the petitioner's application, because the Circuit Court of Appeals applied the wrong rule of law to the facts in this case, in that the substantial evidence adduced on the trial did not exclude every other reasonable hypothesis except the guilt of petitioner Randall; It was the duty of the trial court to instruct the jury to return a verdict of not guilty and in failing so to do, it became the duty of the appellate court to reverse a judgment of conviction, which the appellate court failed to do.

IV.

This Honorable Court committed error in allowing the Circuit Court of Appeal's decision to stand un-

challenged after the Circuit Court had applied a wrong rule of law to the facts.

V.

This Honorable Court committed error in this case by refusing and failing to grant petitioner's application for a writ of certiorari, because District Judge Walter J. Lindley, had participated in such petitioner's appeal before the Circuit Court of Appeals, after having theretofore decided the same question involved in the trial court, in a case involving Sterling J. Perry.

VI.

The Honorable Court committed error in denying the petitioner's application for writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit, because the said circuit court as constituted with District Judge Lindley sitting was an unauthorized court, in that: District Judge Lindley had therefore decided the identical question involved in the appeal, and was thereby disqualified.

VII.

The Honorable Court committed error in denying the petitioner's application for a writ of certiorari because it is apparent from the record in this case that District Judge Lindley was disqualified from sitting in judgment on appeal in this case because he had the matter of the defendant Perry guilt or innocence before in a report of the Probation Office for that district, as well as the plea of not guilty in the Randall Case.

CONCLUSION AND PRAYER

For the foregoing reasons as well as the reasons heretofore urged and set forth by petitioner, the petitioner by his solicitor, respectfully prays that this Honorable Court grant him a rehearing in this cause, and that upon such rehearing a writ of certiorari issue to the Circuit Court of Appeals, for the Seventh Circuit, to the end that this cause may be reviewed and determined by this Court and that the judgment of the Circuit Court of Appeals be reversed.

Respectfully submitted,

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Attorneys for Petitioner.

CERTIFICATE OF COUNSEL

I, Mack Taylor, Solicitor for the petitioner Harry R. Randall, do hereby certify that this motion for rehearing is filed in good faith and not for delay and is limited to matters set forth therein.

MACK TAYLOR,
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Solicitor for Petitioner.